

Trade Practices Act Review

The submission focusses on how competition law and its enforcement in Australia is anti-competitive. The CFV's first submission to the Commonwealth Government's Trade Practices Review Committee, 26 June 2002 The submission was prepared by David Griffiths, Secretary, Co-operative Federation of Victoria Ltd.

Trade Practices Act Review

Competition policy is an essential public policy ingredient. The general aim of competition policy is to facilitate competition in the market and protect the interests of consumers and, therefore, prevent businesses exploiting the market by restricting competition and increasing their prices and profits artificially.

Co-operative legislation exists in States such as N.S.W., Queensland and Victoria but the legislation in itself does not ensure that there is equal treatment of and non-discrimination towards co-operatives in other legislation and implementation.

Trade Practices Act

In Australia the Trade Practices Act 1974 and the Prices Surveillance Act 1983 provide the legislative basis for competition policy. The Acts are administered by the Australian Competition and Consumer Commission (ACCC). The ACCC was formed on the 6 November 1995 – succeeding the Trade Practices Commission and the Prices Surveillance Authority. The Trade Practices Act 1974 covers:

- Anti-competitive and unfair market practices
- Mergers and acquisitions
- Product safety/liability
- Third party access to facilities of national significance.

Co-operative Difference

Competition legislation in Australia does not recognize, however, the essential difference between small players co-operating through co-operatives and the anti-competitive practices of large investor-owned companies. Instead, competition

legislation creates an environment in which the Trade Practices Commission does not adequately differentiate between co-operatives and cartels. This does not mean, however, that co-operatives should be allowed to take unfair advantage in the marketplace.

USA

In the USA the Capper-Volstead Act exempts co-operatives from monopoly legislation subject to review by the Secretary of Agriculture. Unlike Australia, co-operatives in the USA are full partners in the democratic process. What underpins USA competition policy towards co-operatives is the recognition that co-operatives are different – that co-operative businesses are different because they are member-owned, democratically controlled and driven by the needs of their members and their community and that this difference is critical for consumers.

Co-operatives by their very structure and nature involve the collaboration of individuals who act in unison – to achieve bargaining power in a market otherwise dominated by investor-owned enterprises. Farmers and fishermen co-operate to get a fairer deal from large-scale buyers of their products and small businesses co-operate to get a better deal from manufacturers and suppliers. Unfortunately, the Trade Practices Act 1974 and the ACCC tend to indiscriminately equate co-operatives with corporations.

Authorised Anti-Competition

There is provision in subsection 88 (1) of the Trade Practices Act for authorisations to make and give effect to a contract, arrangement or understanding which may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the Act.

Under the Act organisations that engage, or propose to engage, in anti-competitive business arrangements or conduct can seek authorization for these arrangements or conduct.

The ACCC has, for instance, authorized collective bargaining of farm-gate prices and milk standards through a representative body comprising six co-operatives with 580 members.

The problem is that co-operatives should not be required to lodge applications for authorization because the business structure of co-operatives is pro-competitive.

Necessary Review

The Australian Government's decision to review the Trade Practices Act is necessary and supported because improvements to the Act are necessary to achieve increased competition through recognizing that co-operatives promote competition instead of presuming that co-operatives are anti-competitive. In particular, it is necessary for the Act to be changed to "l b provide an appropriate balance of power between competing businesses competing with or dealing with businesses that have larger or power" and "l c. promote competitive trading which benefits consumers in terms of service."

The recognition of the co-operative difference by the Government and through the Trades Practices Act and the ACCC is basic to the principle of equal treatment and non-discrimination of co-operatives. The principle of equal treatment and non-discrimination of co-operatives is fundamental for the co-operative movement and co-operative development.

There is a need to recognize that the structure of co-operatives is competitive and if anything needs to be regulated, then, it is any anti-competitive conduct of co-operatives. The essential failure of the current competition regime is to focus on co-operative structure rather than conduct.

State and Co-operation

The 6th Asia Pacific Co-operative Ministers' Conference was held between 3-7 April 2002 in Kathmandu, Nepal. The first conference was held in Sydney in 1990.

The focus of the Ministerial Conference series has been on creating an enabling public policy environment for the development of co-operatives in countries throughout the Asia-Pacific region.

Australia attended the Kathmandu conference.

An Expert Committee prepared the Kathmandu Recommendation and this was endorsed by delegates and adopted at the conference.

ILO

The ILO is the United Nations specialized agency that promotes social justice and internationally recognized human and labour rights. The ILO was established in 1919. Australia is a member of the ILO.

The International Labour Organisation (ILO) is currently working on the development of a new Recommendation on the promotion of co-operatives. The new Recommendation will replace the current Co-operatives (developing Countries) Recommendation, 1966. The 1966 Recommendation was the outcome of the last comprehensive discussion on co-operatives by the ILO.

Further Reading

ACCC Draft Determination Application for Authorisation lodged by Premium Milk Supply Pty Ltd in respect of the collective negotiation of farm-gate milk prices and milk quality standards with Pauls Limited, 14 February 2001

Cooperatives in social development Report of the Secretary-General, United Nations General Assembly Economic and Social Council, A/56/73-E/2001/68, 14 May 2001

Co-operative Law **The Link**, Co-operative Initiatives Panel, Volume 8, Issue 2, March-April 2002, p 3

Griffiths, David **Co-operatives and Public Policy**, Co-operative Federation of Victoria Ltd, 1998

Griffiths, David **The Co-operative Model**, Co-operative Federation of Victoria Ltd, 1998

ICA President, Ivano Barberini, addresses the ILO Committee on the Promotion of Co-operatives, International Co-operative Alliance, 5 June 2002

International Co-operative Alliance, **ICA Position Paper, ILO Recommendation concerning the promotion of co-operatives**

International Labour Conference, 90th Session 2002, Report IV (2B) **Promotion of Co-operatives**, Fourth item on the agenda, International Labour Office, 2002

Letter from Ivano Barberini, ICA President, to Jurgen Schwettmann, Chief, COOP, ILO, 1 December 2001, re ILO Recommendation concerning the promotion of co-operatives.

26 June 2002